

ESA Permitting and the Role of the National Marine Fisheries Service



Take Home Message

The National Marine Fisheries Service is available to assist you early in developing fish passage and other instream projects, and will review your project under the authority of the Endangered Species Act (ESA).



Overview of Presentation

- Consultation Authority
- Basic Species Life History
- NMFS' Role
- ESA Permitting Process
- Keys to Easier ESA Consultations

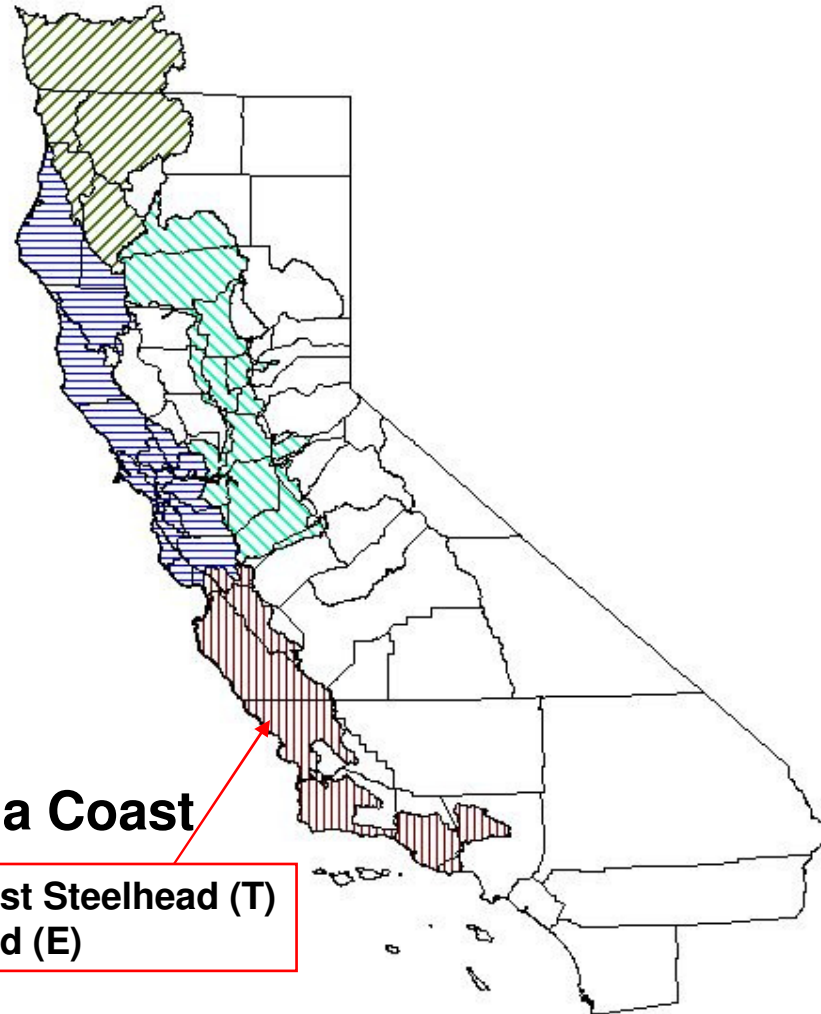


Endangered Species Act of 1973, as Amended

- Sec. 9: Prohibited Acts
- Sec. 4(d): Protective Regulations
- Sec. 7: Interagency Cooperation
- Sec. 10(a)1(A): Research and Enhancement
- Sec. 10(a)1(B): Non-federal Consultations



Steelhead Distribution



Southern California Coast

South-Central California Coast Steelhead (T)
Southern California Steelhead (E)



Critical Habitat



Migrating Adult



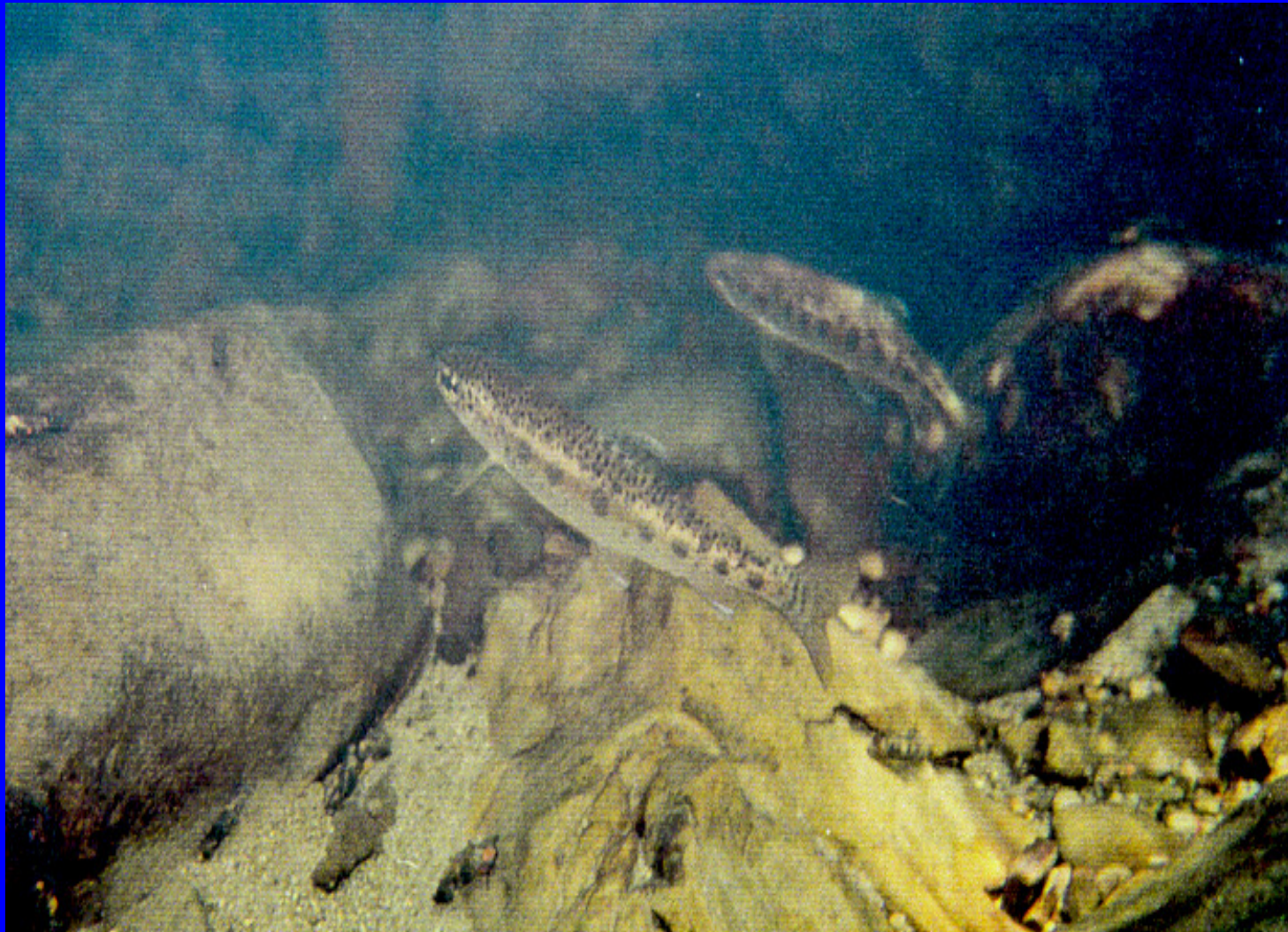
Spawning



Young Fish



Juvenile Steelhead



Common Projects

- Fish Passage
- Culvert Repair/Replacement
- Bridge Repair/Replacement
- Pipeline Repair/Replacement
- Bank Stabilization
- Gravel Mining
- Miscellaneous Flood Control Projects



Problem Culvert



Remedy



NMFS' Role

- Pre-consultation and Technical Assistance
 - Preliminary Design Review
 - Review and Comments on NEPA/CEQA Documents
 - Assist in Developing Minimization Measures
- Endangered Species Act Compliance

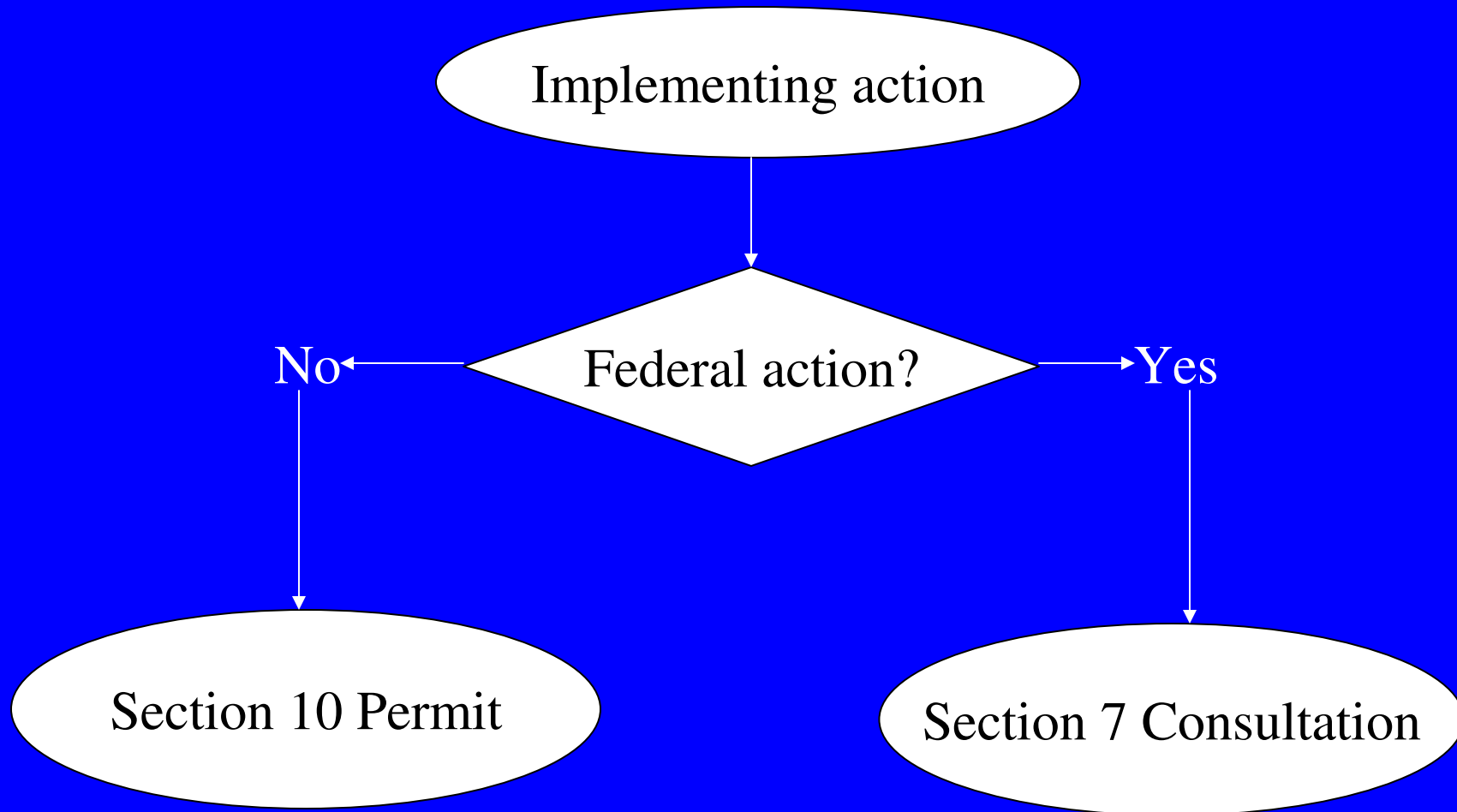


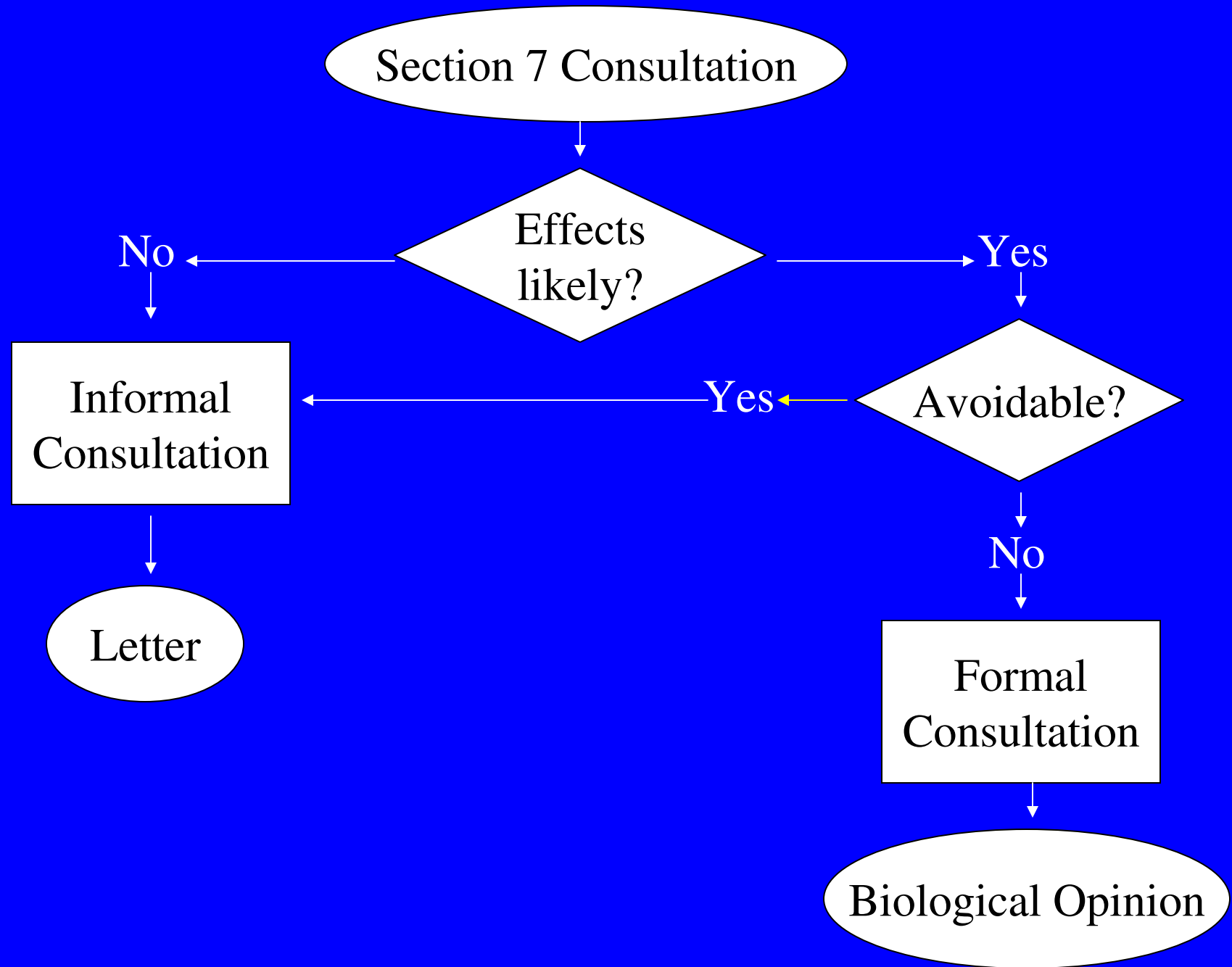
Review for ESA Compliance: the Prerequisite to Implementation

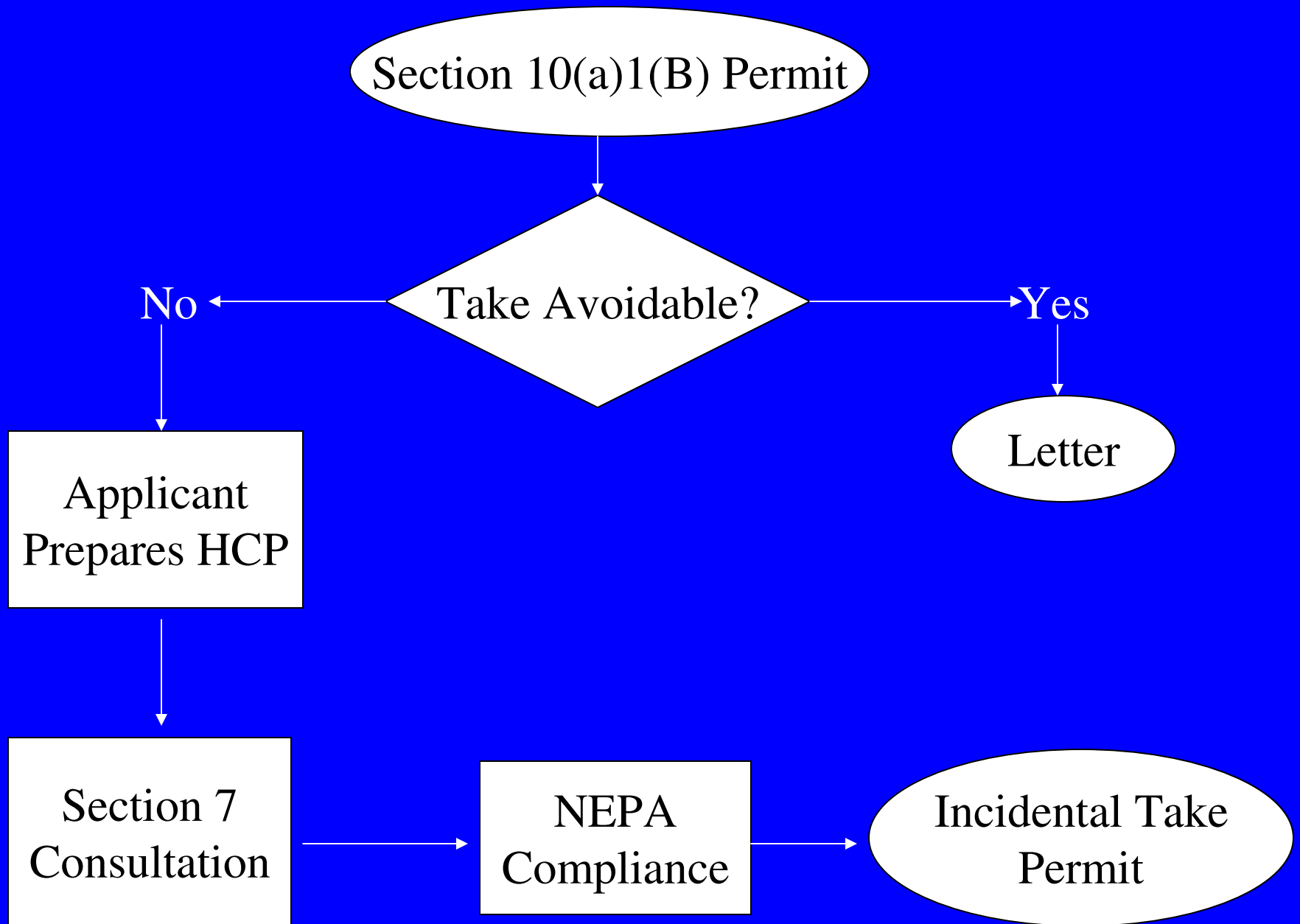
- ‘Take’ of a listed species means to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct”
- Will The Action Cause Incidental Take?
- Acquire Legal Take Authority: Section 7 and Section 10



Trigger for Sec. 7 & Sec. 10







Comparison of Sec. 7 & Sec. 10

- 30 or 135 days for Processing
 - Federal Action
 - Lead Agency Consults
 - Proponent Prepares Description
 - “No Surprise” Policy not Applicable
 - Letter or Biological Opinion
- 3 Months Minimum for Processing
 - No Federal Action
 - Proponent Works with NMFS
 - Prepares HCP
 - “No Surprise” Policy Applicable
 - Incidental Take Permit



Research and Enhancement Permits

Section 10(a)1(A)

- Issued for the intentional take of listed salmonids for the purpose of research or enhancement of the species.
- NMFS does not issue general handling permits for listed salmonids.
- Applications should be filled out online (<https://apps.nmfs.noaa.gov/index.cfm>)

Section 10(a)1(A) Permit

Take Avoidable?

No

Yes

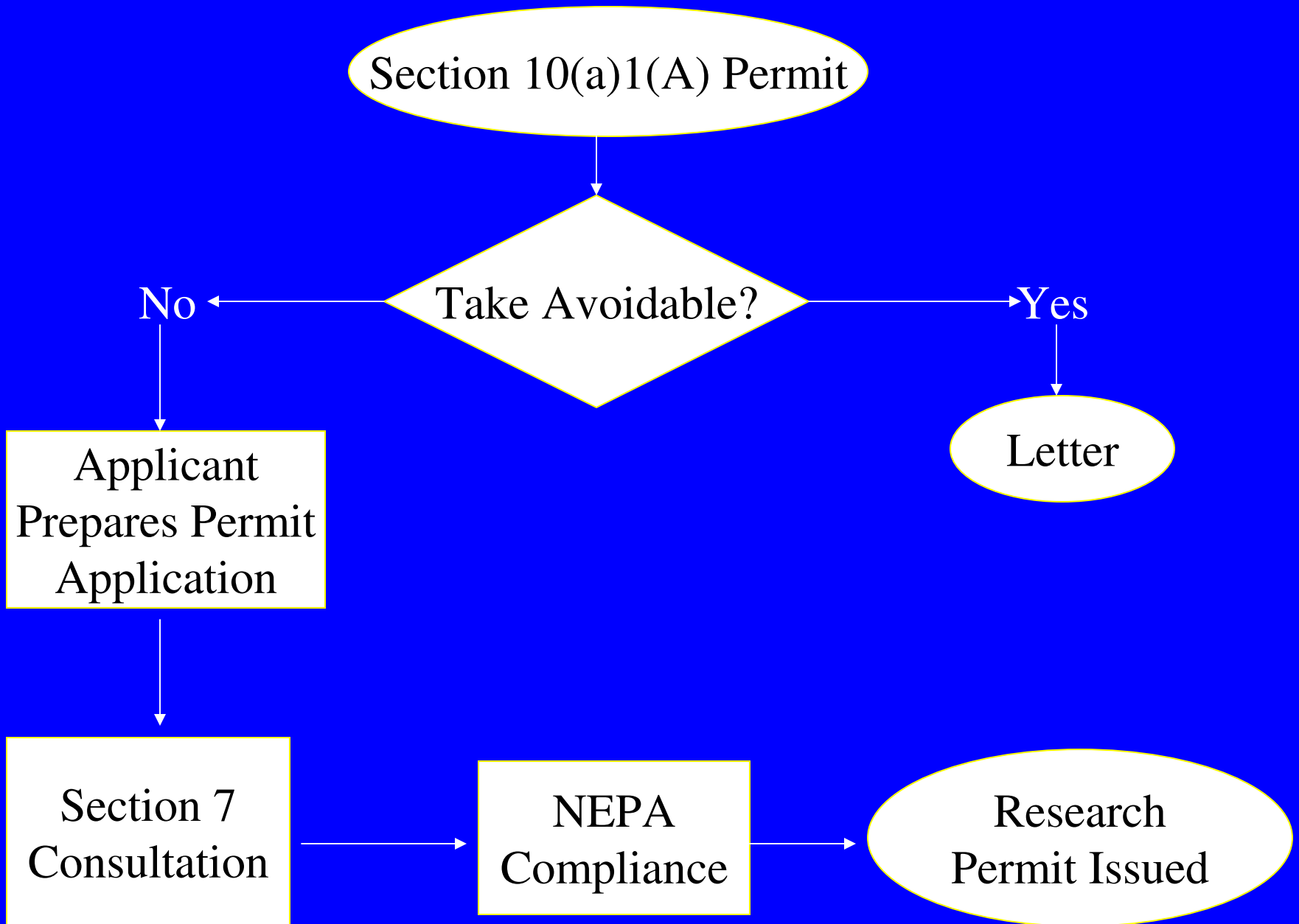
Letter

Applicant
Prepares Permit
Application

Section 7
Consultation

NEPA
Compliance

Research
Permit Issued



Keys for Easier Consultations

- Engage in pre-consultation with NMFS.
(recommended)
- Minimize impacts as much as possible.
(recommended)
- Include with the consultation package supporting material or documents referenced in the consultation package.

Keys for Easier Consultations Cont.

- Meet NMFS fish passage guidelines
(<http://swr.nmfs.noaa.gov/hcd/NMFSSCG.PDF>)
(recommended)
- Provide as complete and detailed project information as possible. (required)
Including things like...
 - Hydraulic computations/modeling results.
 - Specific information on timing and duration of project activities.

Other Considerations & Tips

- Be aware of all agencies and their respective roles, regulations, and permits.
- Keep the permitting federal agency in the loop on all project developments and correspondence.
- For bank stabilization and fish passage projects generally the more natural the solution the better.

Other Considerations & Tips Cont.

- Even restoration projects can have impacts to listed species.
- Read the terms and conditions and incidental take statements in your BO's carefully.
- Be aware of significant project changes after the consultation process has been completed and discuss changes to projects with NMFS.

Take Home Message

The National Marine Fisheries Service is available to assist you early in developing fish passage and other instream projects, and will review your project under the authority of the ESA.



- Questions?

